

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 444 of 1997

with

FIRST APPEAL NO. 445 OF 1997

with

FIRST APPEAL NO. 446 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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NIRMALSINH KASALSINH GARASIYA

Versus

SHUBHASHBHAI LALLUBHAI RATHOD DECD.THRO'HEIRS RASILABEN & 2

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Appearance:

MR RAJNI H MEHTA for Petitioners

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.C.PATEL

Date of decision: 08/09/98

ORAL JUDGEMENT

(Per : Panchal, J.)

Admitted. In all the three appeals, Mr. Shakil Qureshi, learned Counsel waives service of notice on behalf of the respondents. At the request of the learned Counsel appearing for the parties, the appeals are taken-up for final hearing today.

As these three appeals arise out of common judgment and award dated September 7, 1996 rendered by the Motor Accident Claims Tribunal (Main), Bhavnagar, in Motor Accident Claim Petitions no. 623/95, 624/95 and 625/95 respectively, we propose to dispose of them by this common judgment.

2. The accident in question took place on December 3, 1995. On the date of accident, deceased Subhasbhai was proceeding on his scooter no. GJU-1557 towards Vallabhipur side. A Fiat car bearing registration no.GCO-9080 driven by Bhayabhai Devrajbhai was proceeding on the same direction and was ahead of the scooter. At that time, insured Mini Luxury Bus bearing registration no.GJ.IV.1960 came from opposite direction and dashed with fiat car. After dash with the fiat car, the bus dashed with the scooter. In the accident, deceased Subhasbhai, who was on scooter, died as well as Hiteshkumar Bhayabhai, who was one of the occupants of the fiat car, also died. The driver of fiat car suffered injuries. Therefore, the dependents of Subhasbhai and Hiteshkumar Bhayabhai instituted M.A.C.Petitions no. 623/95 and 624/95 for getting compensation before Motor Accident Claims Tribunal (Main), Bhavnagar. The dependents of Subhasbhai claimed Rs. 6 lacs as compensation; whereas the dependents of deceased Hiteshkumar claimed compensation of Rs. 4 lacs. The driver of fiat car also instituted M.A.C.Petition no. 625/95 and claimed compensation of Rs. 1,50,000/-.

3. In M.A.C.Petitions no. 623/95, 624/95 & 625/95,

no written statement was filed by the original opponents no.1 & 2. However, in M.A.C. Petition no. 623/95, Insurance Company had filed written statement at exh.17 and controverted the averments made in the claim petition. In the written statement, it was mentioned that without impleading the Insurance Company which had insured the owner of the fiat car, the petition was not maintainable and was liable to be dismissed. It was claimed therein that the accident took place because of negligence on the part of the driver of fiat car and therefore, also the claim petition was liable to be dismissed.

4. Having regard to the pleadings of parties, the Tribunal framed issues for determination. After considering the evidence led by the parties, the Tribunal held that the driver of the mini bus was negligent in driving his vehicle and his negligence resulted into accident. In M.A.C.Petition no. 623/95, the Tribunal assessed income of the deceased at Rs. 5000/- per month and after deducting 1/3rd amount, which would have been spent by the deceased for himself, the Tribunal awarded Rs. 3,60,000/- as dependency benefit to the claimants. The Tribunal granted a sum of Rs.20,000/- by way of loss of estate and also Rs. 4,000/- as damage to the scooter. It was noticed by the Tribunal that claimant Rasilaben, who is widow of deceased Subhasbhai, had also sustained injuries in the accident and, therefore, the Tribunal awarded a sum of Rs. 16,000/- to her by way of compensation. Thus, in M.A.C.Petition no.623/95, the Tribunal passed an award of Rs.4 lacs with 12% interest thereon as compensation in favour of the original claimants.

5. In M.A.C.Petition no.624/95, income of the deceased was assessed at Rs.2000/- per month and dependency benefit was worked out to be Rs.1,20,000/-. After adding a sum of Rs. 20,000/- towards loss of estate, in all the Tribunal awarded a sum of Rs. 1,20,000/- with 12% interest thereon as compensation to the claimants of M.A.C.Petition no.624/95.

6. In M.A.C.Petition no. 625/95, the Tribunal found that the claimant had sustained clavicle fracture as also fracture of ribs. Having regard to the nature of injuries, the Tribunal held that permanent disability suffered by the claimant was 6% and after assessing income of the claimant at Rs.4000/- per month, the Tribunal awarded Rs. 35,000/- as future economic loss to the claimant. To the said amount, a sum of Rs.

20,000/- was ordered to be added by way of compensation for pain, shock and suffering. In view of the evidence led by the claimant regarding expenses incurred by him for medical treatment, transport, diet etc., the Tribunal thought it fit to award a sum of Rs. 30,000/- as compensation on that count. The Tribunal further held that the claimant had suffered actual loss of income of Rs. 30,000/- and, therefore, under that head, a sum of Rs. 30,000/- had been awarded by the Tribunal. As noted earlier, in the accident, car was also damaged and, therefore, the claimant was awarded a sum of Rs.35,000/- as deamage to the claimant. In all, the Tribunal awarded a sum of Rs.1,50,000/- with 15% interest thereon as compensation to the claimant.

7. Learned Counsel for the appellants submitted that in M.A.C.Petition no.623/95, age of the deceased was 51 years at the time of accident and as higher multiplier is adopted by the Tribunal while calculating dependency loss, award deserves to be modified suitably. So far as First Appeal no. 445/97, which is directed against award rendered in M.A.C.Petition no. 624/95, is concerned, it was pleaded that prospective income of the deceased worked out by the Tribunal is on higher side and, therefore, award in this case also should be suitably modified. In First Appeal no. 446/97, which arises out of award rendered in M.A.C.Petition no. 625/95, it was claimed that the Tribunal committed error in awarding Rs. 20,000/- to the claimant under the head of pain, shock and suffering and at the best, a sum of Rs. 10,000/- could have been awarded under that head. It was further submitted that in view of unsatisfactory evidence led by the claimant regarding medical treatment, expenses incurred for transport, diet etc., the Tribunal should not have awarded a sum of Rs. 30,000/- on that count. It was also pointed out that no cogent evidence was led by the claimant to establish that damage to the Car was to the extent of Rs. 35,000/- and, therefore, the award passed in this case also deserves to be modified suitably.

8. Mr. Shakil Qureshi, learned Counsel for the respondents in all these appeals submitted that having regard to the evidence led by the claimants, a just award has been passed in these cases and Court should not interfere with the same in present appeals.

9. We have considered the evidence led by the parties as well as relevant documents which have been produced by the learned Counsel appearing for the parties for our perusal. So far as First Appeal no. 444/97,

which arises out of award rendered in M.A.C.Petition no. 623/95 is concerned, we notice that the age of the deceased at the time of accident was 51 years. Having regard to the facts and circumstances of the case, we are of the opinion that while calculating dependency loss, multiplier of 7 should have been adopted by the Tribunal. If multiplier of 7 is adopted, the claimants would be entitled to a sum of Rs.2,80,000/- by way of dependency loss. Thus, in our view, the claimants are entitled to, in all, compensation of Rs. 3,20,000/- with costs and interest at the rate of 12% thereon from the appellant as well as original opponents no.1 & 2.

10. So far as First Appeal no. 445/97 is concerned, we find that the deceased boy was aged 11 years at the time of accident and was studying in 7th Std. Naturally, in such cases there cannot be any evidence regarding income of the deceased and, therefore, some inference will have to be drawn by the Court. On the facts and in the circumstances of the case, we are of the opinion that globe award of Rs. 1 lac ought to have been passed in favour of the claimants. Therefore, we hold that claimants in First Appeal no. 445/97 would be entitled to a sum of Rs. 1 lac by way of compensation with costs and interest at the rate of 12% as compensation from the appellant and original opponents no.1 & 2.

11. As far as First Appeal no.446/97, which arises from award passed in M.A.C.Petition no.625/95, is concerned, we find that calculation of loss of future income is perfectly justified and no ground is made out by the appellant to interfere with the same. However, as far as pain, shock and suffering is concerned, we are of the opinion that in view of injury sustained by the claimant, the Tribunal ought to have awarded a sum of Rs.10,000/- under the said heads. Similarly, unsatisfactory evidence has been led by the claimant to establish that he had incurred an expenditure of Rs. 30,000/- towards medical treatment, transport, diet etc. and, therefore, we are of the opinion that for the expenditure incurred by the claimant, a sum of Rs.20,000/- ought to have been awarded by the Tribunal as compensation. Again, actual loss of income is correctly worked out by the Tribunal, which does not require to be interfered with in the present appeals. As far as damage to the Car is concerned, we notice that no satisfactory evidence is led by the appellant to establish that damage was caused to the Car to the extent of Rs.30,000/-. Having regard to the totality of the facts of the case, we are of the opinion that for damage to the Car, a sum of Rs.15,000/- ought to have been awarded as compensation

to the claimant. Thus, in our view, the claimant is entitled to a sum of Rs. 1,10,000/- as compensation with costs and interest at the rate of 12% per annum from the appellant and original opponents no.1 & 2.

For the above stated reasons, all the three appeals are partly allowed as indicated hereinabove. The respective award passed in each claim petition shall stand modified accordingly. The appellant is given time of 12 weeks from today to deposit rest of the amount in each claim petition. In case the amount is not deposited by the appellant within 12 weeks from today in the Tribunal, the appellant shall be liable to pay interest at the rate of 15% on the amount which requires to be deposited in the Tribunal. All the three appeals are accordingly, partly allowed, with no order as to costs.

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